



Forbearance from §252(i) of the Act

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The FCC Should Forbear from §252(i) of the Act

Forbearance from §252(i) of the Act will restore market-based incentives to the negotiations.

>> How Forbearance Will Work in Practice

- BellSouth makes its Standard Interconnection Agreement on its CLEC website.
 - BellSouth updates its Standard Agreement quarterly to incorporate changes in state and federal laws, including new products and services, and rates ordered by state commissions.
 - CLECs are free to execute the standard agreement or use it as the basis for negotiations.
 - The Parties will be able to negotiate more customized agreements.
- The States retain §252 oversight.
- The Commission retains §202 enforcement authority.



Why the FCC Should Forbear from §252 (1) of the Act

- Constrains free and full negotiations:
 - BellSouth is discouraged from entering into customized provisions based specifically on the CLEC's status, such its business plan, financial situation or technical capabilities, for fear that the provisions will be adopted by unrelated parties that are not in a position to deliver to BellSouth the benefit it is due from the bargain struck between the parties.
 - BellSouth's experience has been that CLECs often adopt provisions of an agreement negotiated by other CLECs without the necessary awareness of the intent of the parties who drafted the original agreement.
 - The adopting CLEC may not have the resources to implement or comply with the adopted provisions.
 - BellSouth is forced to consider that any CLEC can adopt an agreement, even if it is not similarly situated to the negotiating CLEC, rendering the commercial give and take meaningless.

>> Why the FCC Should Forbear from §252 (i) of the Act

- Specific problems with §252(i):
 1. Attempts to adopt language beyond the scope of §252(i), such as:
 - provisions that do not constitute an interconnection arrangement, network element or service, such as deposit provisions, billing disputes language or governing law provisions
 - request for single provisions without accepting the legitimately related provisions, for example:
 - request for “bill and keep “ provisions without accepting associated network interconnection arrangements

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2. Attempts to adopt provisions for gaming purposes, for example:

- agreements that have not yet been updated by the original parties consistent with a change in law
- agreements that will soon expire, to take advantage of the “evergreen” period
- language that can be misconstrued to create rights and obligations that the negotiating parties did not intend, including vaguely worded language ordered by a state commission
- avoiding incorporating all language resulting from a change in law by adopting only those provisions that are beneficial to the CLEC and delaying the negotiation process with regard to the provisions beneficial to the ILEC

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Gaming (cont.)

- Trying to obtain through adoption those provisions to which the CLEC is not entitled by law, such as:

reciprocal compensation for ISP traffic for a CLEC that did not exchange traffic with the ILEC in 2001

regional OSS rates in a single state

changes in rate structure due to state commission order

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3. §252 (i) creates an administrative burden:

- problems tracking cross references when CLECs adopt specific provisions from an agreement
- operational issues associated with a CLEC having multiple agreements across the BellSouth region
- adopting agreements that do not have all of the provisions the adopting CLEC needs to carry out its specific business plan
- time and resources required by both parties to attempt to ensure that all the problems cited above do not occur

>> FCC's Tentative Proposal Regarding the SGAT

- Adoption of individual provisions from the SGAT results in the same problems as allowing CLECs to adopt individual provisions from existing interconnection agreements.
- Although CLECs would not be able to adopt terms that were specifically negotiated based upon the status of the carrier, they would still be able to engage in gaming, and administrative issues still exist.

>> FCC's Tentative Proposal Regarding Individually Negotiated Agreements

- Adoption of individually negotiated interconnection agreements in their entirety results in many of the same problems as allowing CLECs to adopt individual provisions from existing interconnection agreements.
- CLECs would continue to be able to adopt terms that were specifically negotiated based upon the status of the carrier, and entire agreements can be adopted for gaming purposes

>> 252 (i) Is Ineffective in Practice

- Adoption of existing agreements usually require minor or significant modifications to provisions when:
 - An adopting CLEC is not similarly situated
 - Adopted language conflicts with or is incompatible with the remainder of the agreement
- Adoption of any agreement (other than the entire SGAT) or any portion of an agreement constrains customized negotiations, allows for gaming and causes administrative burdens.
- The FCC should forbear from 252(i).